IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO. 183 OF 1988.

The Commissioner of Income-Tax. ... Applicant.

V/s.

M/s.Noble Paints & Varnish Co. ... Respondent.

Ashok Kotangale for the applicant.

None for the respondent.

CORAM : V.C.DAGA AND A.S.AGUIAR, JJ.

DATED : 1st July 2005.

P.C. :

. This reference pertain to assessment year 1976-77. By this reference, under section 256(1) of the Income-tax Act, 1961, the Income Tax Appellate Tribunal has referred the following questions of law for the opinion of this Court:

1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that the disallowance out of payments, etc. to the employee-directors of the assessee-company should be considered under section 40(c) and not under section 40A(5) of the Income-tax Act, 1961?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that the subscription on account of monthly bills of the Directors of the assessee-company to the Royal Bombay Yacht Club was for the purposes of the assessee company and was, therefore, an admissible deduction in working out the business income?

3. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that the expenses of Rs.46,351 were business promotion expenses wholly and exclusively for the purposes of the business and consequently the claim of deduction of these expenses in working out the business income was admissible?

2. Learned counsel for the parties agreed that in view of the decision of this Court in the case of **C.I.T. v. Hico Products Pvt.Ltd.(No.1)**, (1993) 201 ITR 567 question No.1 has to be answered in the affirmative i.e. in favour of assessee and against the revenue.

3. They further agreed that in view of the decision of the Apex Court in the case of **Otis Elevato Co. (India) Ltd. v. C.I.T.** (1992) 195 ITR 682, question No.2 has to answered in the affirmative i.e. in favour of the assessee and against the revenue. We answer the questions accordingly.

4. So far as question No.3 is concerned, in view of the reasons recorded by us in our judgment dated 1st July, 2005 passed in Income-Tax Reference No.397 of 1988 (**C.I.T. v. M/s.Pithwa Engg.Works**); wherein we have relied upon decision of this court in the case of **C.I.T. v. Camco Colour Co.** (2002) 254 ITR 565, we do not think it necessary to answer this question, having negligible tax effect.

5. Accordingly, question Nos.1 and 2 are answered in the affirmative i.e. in favour of the assessee and against the revenue and question No.3 is returned unanswered. Reference stands disposed of with no order as to costs.

(A.S.AGUIAR, J.) **(V.C.DAGA, J.)**